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August 17, 2015

By ECF

Honorable Anita B. Brody
United States District Court
Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street, Room 7613
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Lewis v. *Kansas City Chiefs Football Club*, 14-cv-01995; *Horn* v. *Kansas City Chiefs Football Club*, 14-cv-03382; *Smith* v. *Kansas City Chiefs Football Club*, 14-cv-03383; and *Kenney* v. *Kansas City Chiefs Football Club*, 14-cv-04779

Dear Judge Brody:

We write on behalf of our client the Kansas City Chiefs Football Club (the "Chiefs") concerning the motion to remand (the "Motion") filed on July 30, 2015 by Plaintiffs in the above-captioned actions pending in *In re National Football League Players' Concussion Injury Litigation* ("MDL 2323"). For the reasons set forth below, the Motion is procedurally improper and premature. Accordingly, the Chiefs respectfully request that it be denied without prejudice at this time or, at the least, held in abeyance until the Court issues a case management order permitting and scheduling supplemental briefing on all preemption-related motions in the Opt Out litigation.

First, the plaintiffs in these actions already have motions to remand pending before this Court. Filing successive motions seeking the same relief as a motion that remains pending before the Court is improper. *See*, *e.g.*, *UFCW Local 880-Retail Food Emp'rs Joint Pension Fund* v. *Newmont Mining Corp.*, 2007 WL 2871013, at *5 (D. Colo. Sept. 26, 2007) ("[Proposed intervenor] proffers no explanation as to why it had a good faith legal basis to file repetitive motions seeking the same relief that remained *sub judice* as a result of its first request for entry of default."), *aff'd*, 276 F. App'x 747 (10th Cir. 2008); *see also Scott* v. *Cunningham*, 2012 WL 1536312, at *8 (W.D. Wash. Apr. 12, 2012) ("'[T]he case represents an example of abusive pleading practice where multiple motions are filed asking for the same relief and the plaintiff does not wait for a response from the court before filing the same motion again. Motion practice of this nature cannot be for a proper purpose and only delays and increases the cost of litigation.'"), *aff'd*, 516 F. App'x 672 (9th Cir. 2013).

Here, Plaintiffs do not contest—nor could they—that motions to remand were pending at the time they filed the Motion. Indeed, the *Lewis* Plaintiffs acknowledged the pendency of their remand motion by filing a notice of supplemental authority with this Court on May 15, 2014. (*See* Pls.' Notice of Suppl. Authority In Supp. of Pls.' Mot. to Remand at 2, ECF No. 6039.) The pending motions argue that the actions should be remanded to state court because there is no federal jurisdiction on the basis of Section 301 Labor Management Relations Act preemption—the same argument made in the instant Motion. Thus, the Motion should be denied without prejudice at the outset as duplicative of pending motions.

Second, the Motion is an attempted end-run around this Court's effort to administer the MDL proceedings in an orderly fashion by coordinating supplemental briefing on all preemption-related motions, including Plaintiffs' pending remand motions. By filing a new remand motion, Plaintiffs wholly disregard the Court's express instructions at the parties' June 10, 2015 Rule 16 scheduling conference on how these Opt Out litigations would proceed. At that conference, the Court directed Plaintiffs' counsel to resolve any client representation issues and then to notify the Court so that a subsequent conference could be scheduled to address the timing of any supplemental briefing on pending motions. The Court has broad discretion to manage its docket in this fashion in order to maximize judicial efficiency and minimize burden on the parties. *See In re Asbestos Prods. Liab. Litig. (No. VI)*, 718 F.3d 236, 246 (3d Cir. 2013) ("[D]istrict judges 'must have authority to manage their dockets, especially during [a] massive litigation'" (alteration in original) (quoting *In re Fannie Mae Sec. Litig.*, 553 F.3d 814, 823 (D.C. Cir. 2009))); *see also In re Phenylpropanolamine (PPA) Products Liab. Litig.*, 460 F.3d 1217, 1232 (9th Cir. 2006) (stating that district courts managing multidistrict litigation cases need "to have broad discretion to administer the proceeding as a whole, which necessarily includes keeping the parts in line"). To achieve those goals, supplemental briefing on Plaintiffs' motions to remand should be coordinated with supplemental briefing on the NFL Parties' pending motion to dismiss the other cases pending before the Court in this MDL proceeding. As Plaintiffs' Memorandum in Support of their Motion illustrates, both motions—despite involving different

defendants—will require the Court to consider substantially overlapping arguments concerning provisions of the NFL Collective Bargaining Agreements and Section 301 Labor Management Relations Act case law. The coordination of supplemental briefing (and argument) on preemption-related motions would be consistent with the Court's intent to prioritize and coordinate the resolution of related motions while maintaining structured, efficient MDL proceedings. It would also be consistent with the Court's June 13, 2012 order that stayed "[t]he time for NFL Defendants and Riddell Defendants to respond to any motion to remand . . . until further order from this Court." (Order at 1, ECF No. 89.) By staying those responses, the Court recognized then that it would be inefficient to address preemption-related motion practice in piecemeal fashion. The same holds true for the instant Motion.

Although Plaintiffs argue that their motions to remand should be decided "as soon as possible," none of the cases cited by Plaintiffs supports the proposition that the Court should accelerate Plaintiffs' motions over all the other preliminary motions pending in cases comprising this MDL proceeding or that a court must resolve all jurisdictional challenges before conducting any docket management. Instead, the cases simply hold that a district court has discretion to consider remand promptly *if it so chooses*, *see J.C. ex rel. Cook* v. *Pfizer, Inc.*, 2012 WL 4442518 (S.D. W.V. Sept. 25, 2012), and that jurisdictional motions should be decided before motions addressing the merits. *See Coggins* v. *Keystone Foods, LLC*, No. 15-480, 2015 WL 3400938 (E.D. Pa. May 27, 2015); *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83 (1998). Plaintiffs ignore that the motion to dismiss on preemption grounds *is* a jurisdictional motion—and the Court has already prioritized such motions over motions on the merits. There is no reason to proceed with one jurisdictional motion before the other when judicial efficiency would be best served by coordinated briefing and consideration.

In sum, the Chiefs respectfully request that the Motion be denied without prejudice as procedurally improper at this time or held in abeyance until the Court issues a case management order permitting and scheduling supplemental briefing on all preemption-related motions in the Opt Out litigation. In the event that the Court alternatively determines that the parties should proceed with new briefing on the motions to remand filed in the above-captioned actions, the Chiefs respectfully request the right to submit a consolidated opposition brief on the merits of the motion on a briefing schedule agreed to by the parties or ordered by the Court.

Respectfully submitted,

Bruce Birenboim

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing document was served electronically via the Court's electronic filing system on the 17th day of August, 2015, upon all counsel of record.

Dated: August 17, 2015

/s/ Bruce Birenboim
Bruce Birenboim